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Congress of the United States
House of Representatives
Washington, DC 20515-2107

October 15, 2009

The Honorable Lisa Jackson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Administrator Jackson:

As you know, a series of recent press reports have highlighted serious concerns with regard to the impacts of toxic wastes from coal-fired power plants on surface and ground water quality. In January of this year, I wrote with a series of questions regarding EPA's regulation of disposal of coal ash. EPA provided a response in mid-February, and I am now writing to follow up based on more recent information.

EPA has determined that power plants are the second largest category of dischargers of toxic pollutants in the country, with most of the toxicity of such discharges associated with metals from coal combustion wastes. The majority of these discharges are associated with disposal of coal ash and of waste captured by scrubbers installed to reduce air pollution.¹ Toxic coal ash slurry and scrubber wastes from coal-fired power plants are commonly disposed of in settling ponds – some as large as 340 acres in size. EPA has concluded that such ponds are not an effective means of removing toxic dissolved metals from such wastewater.² Toxins in such ponds can leach into ground or surface waters or can be discharged directly into surface waters. Coal ash is commonly disposed of in landfills, from which toxins can leach into groundwater or surface water. Numerous cases of such contamination have been documented across the country.³

An article published in the *New York Times* on October 12 asserted the following:⁴

- The Hatsfield Ferry plant in southwestern Pennsylvania has released tens of thousands of gallons of wastewater containing toxins into the Monongahela River,

¹ Environmental Protection Agency, Notice of Availability of Preliminary 2008 Effluent Guidelines Program Plan, 72 Fed. Reg. 61,335, 61,342 (Oct. 30, 2007).

² Environmental Protection Agency, Steam Electric Power Generating Point Source Category: 2007/2008 Detailed Study Report at pp. 3-30 to 3-60 (Aug. 2008), available at <http://epa.gov/guide/304m/2008/steam-detailed-200809.pdf>.

³ Shaila Dewan, Hundreds of Coal Ash Dumps Lack Regulation, *New York Times*, Jan. 6, 2009; Bruce Henderson, N.C. Data: Tainted water near coal-ash ponds, *Charlotte Observer*, Oct. 7, 2009.

⁴ Charles Duhigg, Cleansing the Air at the Expense of Waterways, *New York Times*, Oct. 12, 2009.

which provides drinking water to 350,000 people and flows through Pittsburgh 40 miles to the North.

- 90 percent of the 313 coal-fired power plants violating the Clean Water Act since 2004 did not face fines or other penalties.
- The Hatsfield Ferry plant has had 33 violations since 2006, but has only faced \$26,000 in fines.
- 21 plants in 10 States have dumped arsenic into rivers or other waters at concentrations as much as 18 times the federal drinking water standard.
- Power plant landfills have polluted groundwater in more than a dozen States.
- EPA concluded in a 2007 report that people living near power plant landfills faced cancer risks 2000 times higher than federal health standards.

As EPA's response to my January 2009 letter explained, under the Resource Conservation and Recovery Act (RCRA), EPA determined in 1993 that certain "large-volume" coal combustion waste did not warrant regulation as hazardous waste under Subtitle C of RCRA. In 2000, EPA determined that large-volume coal combustion wastes that are co-managed with certain other wastes likewise did not warrant regulation as hazardous waste under Subtitle C, though such wastes could be regulated under rules for non-hazardous wastes if disposed of in surface impoundments or landfills. On March 7, 2009, EPA officials announced that EPA would move forward with new proposed regulations for coal combustion wastes under the Resource Conservation and Recovery Act (RCRA) by the end of 2009.

EPA has not revised its current Clean Water Act regulations for discharges from coal-fired power plants since 1982 – over a quarter century ago, and before use of scrubbers on coal-fired power plants became common. From 1994 through 2008, the Agency has repeatedly announced that it is studying the issue for potential regulation, but has taken no regulatory action. On September 14, 2009, several environmental groups gave notice to EPA of their intent to sue the Agency to require that it comply with its duties under the Clean Water Act. On September 15, 2009, EPA announced that it plans to revise its regulations under the Clean Water Act for discharges from coal-fired power plants.

As the Chairman of the House Energy and Commerce Committee's Subcommittee on Energy and Environment, which has jurisdiction over electricity generation and other energy issues, air quality regulation, regulation of solid and hazardous waste, and protection of drinking water, I am deeply concerned about the risks posed by disposal of waste from coal-fired power plants. I am encouraged that you have announced plans to take regulatory action on this matter, and intend to support swift and vigorous action to protect public health and the environment.

To assist the Subcommittee in its oversight of these issues, please respond to the following questions within 15 working days, or no later than November 5, 2009:

- Has EPA assessed the public health and environmental risks and impacts associated with disposal of coal-fired power plant wastes? If so, please provide a summary of the conclusions of such assessment and any relevant reports or

memoranda. If not, does the Agency have plans to do so, and what is the projected time frame for completion of such an assessment?

- Has EPA specifically assessed the discharges from the Hatsfield's Ferry plant? If not, why not? If so, what findings has EPA made with regard to the legality of such discharges and their effects on public health and the environment? Do these discharges present a risk to the health of the 350,000 people that, according to the article, rely on the Monongahela River for drinking water?
- Please identify all coal-fired power plants that are currently causing discharges or leaching of water contaminated by coal combustion wastes into surface or ground water (whether from settlement ponds, landfills, or other sources), where such plants are located, who owns each such plant, whether there are any known instances of illegal discharges or groundwater contamination from coal combustion wastes at such plant, and what enforcement actions, if any, have been taken as a result.
- Does EPA, or do State authorities, monitor wastewater discharges from coal-fired power plants and groundwater in proximity to coal combustion waste disposal facilities? If not, why not? If so, what does such monitoring show with regard to risks to public health or the environment from direct discharges or leakage of toxins to ground or surface water?
- If the assertions of the *New York Times* article cited above with regard to enforcement are accurate, what explains the low proportion of Clean Water Act violations by coal-fired power plants that result in fines or other penalties, and the seemingly mild penalties levied against the Hatsfield Ferry plant? What measures is EPA taking to step up its enforcement of the Clean Water Act and other relevant statutes against ground and surface water contamination from coal combustion wastes?
- What legal authorities does EPA have, under the Clean Water Act, RCRA, the Safe Drinking Water Act, or other statutes, to address the public health and environmental risks associated with discharge or leaching from toxic scrubber, ash, or other coal combustion wastes?
- What is EPA's projected schedule for promulgating a proposed rule and a final rule under the Clean Water Act to revise regulations governing discharges from coal-fired power plants?
- What is EPA's projected schedule for promulgating a new proposed rule and final rule addressing regulation of coal combustion wastes under RCRA? Will this rule revisit the 1993 and 2000 regulatory determinations discussed above? How will potential effects on surface and ground water be addressed in any such rule?
- Does EPA have any plans to address potential impacts of coal combustion wastes on drinking water sources under the Safe Drinking Water Act? If not, why not? If so, what is the projected scheduled for regulatory action?
- What legal authorities or mechanisms does EPA have to address risks to public health and the environment from such discharges in the interim, prior to the

effective date of any pending regulations under the statutes identified above?
What authorities do State regulators have to do so, and what mechanisms – such as permit review – can EPA use to ensure that State regulators exercise such authority appropriately to protect public health and the environment? How does EPA plan to use such authorities or mechanisms?

Thank you for your prompt attention to this matter. If you have questions or concerns regarding this letter, please have your staff contact Dr. Michal Freedhoff on my staff at (202) 225-2836.

Sincerely,



Edward J. Markey
Chairman
Subcommittee on Energy and Environment

Cc: Honorable Henry Waxman
Chairman
Energy and Commerce Committee

Honorable Joe Barton
Ranking Member
Energy and Commerce Committee

Honorable Fred Upton
Ranking Member
Subcommittee on Energy and Environment